6-7
08.09.2023
Court No. 12
I.T (p.a)

MAT 1266 of 2021
With
CAN 1 of 2021

Delta Limited
Vs.
Toyeb Ali Midday & ors.

With

FMA 322 of 2023

Arindam Banerjee
Vs.
Toyed Ali Midday

Mr. Soumya Majumder,
Ms. Amrita Pandey,
Ms. Anamika Pandey,
Mr. ghanshyam Pandey,
Ms. Sneha Singh.
… for the appellant
In MAT 1266 of 2021

Mr. R. Guha Thakurta,
Ms. Sanjuti Sengupta,
Ms. Dipa Roy.
…for the respondents

Mr. Bipin Ghosh.
…for the State
In MAT 1266 of 2021

Mr. Pingal Bhattacharyya,
Mr. Rajdeep Sinha.
…for the appellant
In FMA 322 of 2023

Mr. Soumya Majumder,
Ms. Amrita pandey,
Ms. Anamika Pandey.
… for the respondent no.4
In FMA 322 of 2023

Two appeals, being MAT No. 1266 of 2021 and FMA No. 322 of 2023 arise out of the same judgment of the Hon'ble Single Bench dated 11.11.2021, in writ petition being WPA No. 3437 of 2020. Hence, both the appeals are being taken up for disposal by dint of this common order.

The issue relates to payment of gratuity to the respondent No. 1/retired employee, of the appellant company, in appeal being MAT No. 1266 of 2021. The respondent No. 1 joined in the appellant jute mill on 27. 4. 1970 and was superannuated from there on 29. 5. 2003. Hence, upon his superannuation he was entitled to gratuity along with other applicable retiral benefits. However, he was denied by the appellant any payment as to gratuity. That has prompted the respondent No. 1 to initiate a case before the Controlling Authority, as envisaged under the Payment of Gratuity Act, 1972, that is, respondent No.3 in this appeal, for recovery of gratuity. The Assistant Labour Commissioner, being the Controlling Authority, concluded the proceedings and came to the finding that an amount of ₹ 1,83,119.00 was payable by the appellant mill, to the respondent No. 1. A requisition for a certificate was sent by the Assistant Labour Commissioner, to the Certificate Officer, for recovery of the said amount of money and its payment to the claimant/respondent No. 1.

Upon receipt of the requisition from the Assistant Labour Commissioner, as mentioned above, the Certificate Officer initiated a case under the Bengal Public Demands Recovery Act, 1913. In the said proceedings the Certificate Officer had ultimately recorded his dissatisfaction regarding non-compliance of the Rules under the Gratuity Act, 1972 by the Controlling Authority in assessing the amount of gratuity, as said to be payable to the respondent No. 1 and vide his order dated 21.10.2019 rejected the requisition for certificate, in exercise of power under section 6 of the Bengal Public Demands Recovery Act, 1913.

Order of the Certificate Officer dated 21.10.2019 was impugned in the writ petition as above. The Hon'ble Single Bench has decided the matter on merits and pronounced its verdict by dint of the judgment dated 11.11.2021, which is under challenge in both the appeals, being adjudicated by dint of the present order.

The following directions were made by the Hon'ble Single Bench, in its judgment dated 11.11.2021:

> *"(i) The impugned order of the Recovery Officer dated 21.10.2019 (at annexure Page -5 of the writ application) is set aside and quashed. The present CO shall execute the order of payment of gratuity as appears from annexure P-1 of the writ application following Section 8 of the Payment of Gratuity Act, 1972 forthwith.*
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> *(ii) That particular Recovery Officer who dealt with the gratuity case NO 72/15/G/HOW and ultimately rejected the certificate shall be dealt with under Section 9 (1) of the Payment of Gratuity Act 1972 and for this purpose the Principal Secretary, or the Secretary Labour Department, Government of West Bengal, as the case may be shall make a complaint against that particular Recovery officer, who I am told is still in service, for taking cognizance of offence under Section 9 (1) of the said Act to the appropriate Magistrate within a period of two weeks from the date of communication of this judgment and order to him.*
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> *(iii) The Authority under the Payment of Gratuity Act, 1972 shall calculate the rate of interest including the compound interest on the gratuity amount from the date of default for payment of gratuity and shall communicate the same to the respondent No. 4 within a period of 4 weeks from the date of communication of this*

order who shall pay the said amount along with payment of gratuity to the petitioner.

(iv) The vigilance Commissioner of State of West Bengal is directed to initiate an inquiry against the particular Certificate Officer who dealt with the gratuity Case No 72/15/G/HOW and passed the order dated 21.10.2019 and to take all steps required for enquiring the action of the said particular Recovery Officer and to take subsequent action thereafter.

(v) If the due gratuity amount and the interest including compound interest is not paid by the Respondent No.4 namely M/s. Delta Limited to the writ petitioner the appropriate Government and the Controlling Authority shall take immediate steps for Recovery of the gratuity amount with the interest including the compound interest thereon."

The appellant/jute mill has challenged the impugned judgment as above on various grounds. Mr. Majumder, representing the appellant, has firstly argued that the entire procedure of assessment of gratuity by the Controlling Authority and the penultimate steps taken by it for ensuring recovery of the amount of gratuity suffer from absolute lack of due compliance with the statutory provisions. To elaborate this point, Mr. Majumder has pointed out that the controlling authority has violated the mandatory statutory provision of sending requisition in 'Form – 7', to the Certificate Officer. According to him non-compliance of such mandatory provision of law has vitiated the entire process of assessment of gratuity and recovery thereof. The entire process has also been flawed due to non-adherence of the principles of natural justice by the competent authority, he says. As his client/the appellant mill was about to face an order adverse to its interest, according to Mr. Majumder it was bounden duty of the Authority to afford his client an opportunity of hearing before any process of recovery of any money from it, was initiated. Lastly, Mr. Majumder expressed his client's grievance as to imposition of cost of an amount of ₹ 5 lakhs upon his client by the Hon'ble Single Bench, which he says is baseless, unreasoned and prejudicial to his client's interests.

Mr. Bhattacharyya, who is representing the appellant in FMA No. 322 of 2023, has firstly adopted the entire argument advanced on behalf of the appellant in MAT No. 1266 of 2021. The other limb of his argument is that the order of the Hon'ble Single Bench for initiation of proceedings against his client, both departmental and criminal, is coercive, unjustified, baseless and illegal. He has further proceeded to justify the bona fide and due discharge of official duty by his client, in dealing with the matter placed before him. The appellant here is the Certificate Officer, whose order dated 21.10.2019, was under challenge before the Hon'ble Single Bench. According to Mr. Bhattacharyya, his client cannot be subjected to any punitive provision of law without following the due procedure there for and the directions of the Hon'ble Single Bench as above against his client are only unwarranted.

On behalf of the appellants in both the appeals, it has been urged that the impugned judgment of the Hon'ble Single Bench may be set aside.

Mr. R. Guha Thakurta has represented the respondent No. 1/employee, in both the appeals. He submits that employee's grievance is now mitigated as the appellant company has already remitted the entire gratuity amount, as was calculated and stood payable and outstanding, along with the applicable interest thereon. However, so far as the legality of the order of the Certificate Officer dated 21.10.2019 is concerned, Mr. R. Guha Thakurta's stand is absolutely antithetical to that what has been submitted on behalf of the appellants, in both the appeals. Mr. R. Guha Thakurta has strongly objected to the contention of the appellants that the said order of the Certificate Officer has been in conformity with the law and also that the judgment of the Hon'ble Single Judge, impugned in these appeals, suffers from any illegality whatsoever.

So far as the merits of the matter are concerned, this Court holds that the order passed by the Controlling Authority determining payment of gratuity and the assessment of the amount payable under section 7 of the payment of Gratuity Act, 1972, has become final, being not challenged by the present appellant, though being appealable under the statutory provisions. Thus as regards this, no challenge or dispute would be sustainable and there is practically none.

Dispute here revolves around the process of recovery of the amount of gratuity, so determined. As per section 8 of the said Act of 1972, which provides for "recovery of gratuity", the Controlling Authority would issue requisition of certificate to the District Collector for recovery of the amount of gratuity, along with the interest, as arrears of land revenue and pay the same to the person entitled. Now, for execution of the certificate and recovery of the amount of gratuity determined by the Controlling Authority, provisions under section 14 of the Bengal Public Demands Recovery Act, 1913, would be resorted to, in absence of any specific provision for the same promulgated under the Payment of Gratuity Act, 1972. Any one or more modes of recovery, as promulgated thereunder, would be undertaken.

By virtue of section 14 of the Payment of Gratuity Act, 1972, the requirement of due compliance under sections 5 and 6 of the Bengal Public Demands Recovery Act, 1913, becomes unnecessary and redundant. The finding of the Hon'ble Single Judge, in this regards leaves no scope of any doubt, as regards its correctness. Let the said provisions under section 14 of the Payment of Gratuity Act, 1972 and sections 5 and 6 of the Bengal Public Demands Recovery Act, 1913, be extracted hereinbelow for the benefit of discussion :

<u>Payment of Gratuity Act, 1972</u>

*"**14**. **Act to override other enactments, etc.** —The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."*

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<u>Bengal Public Demands Recovery Act, 1913</u>

*"**5. Requisition for the certificate in other cases**.— (1) When any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer a written requisition in the prescribed form:*

Provided that no action shall be taken under this Act on a requisition made by a land mortgage bank registered or deemed to be registered under the Bengal Co-operative Societies Act, 1940 (Bengal Act No. 21 of 1940), or an assignee of such *bank, unless the requisition be countersigned by the Registrar of Co-operative Societies, West Bengal.*

(2) Every such requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable with the fee of the amount which would be payable under the Court-fees Act, 1870 (VII of 1870), in respect of a plaint, for the recovery of a sum of money equal to that stated in the requisition as being due.

***6. Filing of certificate on requisition**.— On receipt of any such requisition, the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due; and shall include in the certificate the fee (if any) paid under section 5, sub-section (2); and shall cause the certificate to be filed in his office."*

According to the law of the land, the Certificate Officer, while executing a certificate is not empowered to sit in appeal as regards the determination of gratuity or the requisition of certificate issued by the Controlling Authority are concerned. Invariably there is no power available for the Certificate Officer to go into the merits of the determination of gratuity payable. So far as the findings of the Hon'ble Single Judge regarding the Certificate Officer not to be an appellate authority of the Controlling Officer – is concerned, this Court has no hesitation to place concurrence with the said finding. Thus, as it has been rightly held by the Hon'ble Single Judge, that the order of the Certificate Officer dated 21.10.2019 is dehors law and not sustainable being illegal. The submissions of the appellants that piecemeal exercise of the provisions of the Bengal Public Demands Recovery Act, 1913, would be an impractical proposition, has also not inspired much confidence in the minds of this Court in so far as on the particular issue of recovery of gratuity under the 1972 Act, the Bengal Public Demands Recovery Act, 1913 has only limited application, to the extent of section 14 thereof. We have to understand that the present case in one under the1972 Act and not one under the 1913 Act.

The challenge of the appellant as to the non-compliance of the provision under section 8, first proviso, by the Controlling Authority regarding not affording the appellant an opportunity of showing cause, before issuance of a certificate, ought not to be considered as a formidable defence on its part, in so far as the facts of non-appearance of the appellant before the Controlling Authority during the proceedings under section 7 of the said Act or the decision of the same being final in this regard, having not been challenged by the appellant within the statutory period of time, would have rendered such exercise, if any, as an empty formality only. Evidently the appellant was motivated to avoid the proceedings. Now it should be prevented to put up a defence wall in the garb of seeking due compliance of the said provision, as its intention to allow the Controlling Authority to proceed ex-parte in determination of gratuity and taking shelter under some other provision of law at a later and belated stage, on the plea of non-compliance of the same is anything but bonafide. Implementation of the provisions of a social security legislation like the Payment of Gratuity Act, 1972, cannot be based on malafide intentions of an escaping and evading employer.

Rest remains, the challenge of the appellants against the Court's directions for initiation of criminal and also the departmental proceedings against the Certificate Officer and that for payment of cost of Rs.5 Lacs against the appellant/jute mill. To controvert the submissions on behalf of the appellants in this regard, as to the coerciveness, unjustifiability and prejudicial impact of those directions upon the appellants, Mr. R. Guha Thakurta has submitted on behalf of the respondent No.1, that the Hon'ble Single Judge, upon considering all the materials on record only, has formed opinion about the malicious procedure undertaken by the respective appellants and has passed the directions as above to answer the imminent injustice appeared to have happened due to the latches of the said appellants, which favoured wrongful gain to the appellant/ jute mill and may not be termed as only unintentional.

This Court is of the opinion that the well elaborated and well reasoned judgment of the Hon'ble Single Bench (impugned in these appeals), has spoken enough as to why an erudite office of the government, is found to have deviated from the standard of efficiency, impartiality and righteousness with which it would be expected to function and discharge the sacred public duty. This Court finds absolutely no reason to interfere with the same, having endorsed the reasons stated therein. Punitive provisions are statutory mandates and the Courts have power to require due execution of the same in an appropriate case. The Hon'ble Single Judge has called for the case record from the office of the Controlling Authority and only after a thorough scrutiny of the same, as duly reproduced in the impugned judgment as above, has founded the opinion to undertake necessary punitive actions. To interfere with the same would amount to infringing the flare of independent exercise of power by the Court. It is pertinent to mention here that the finding and the directions of the Hon'ble Single Bench as above, have not been tainted with any illegality or undue exercise of power not vested in the Court. On the contrary, the Court's directions are in terms of and pursuant to the provisions under section 9 of the Act of 1972. The directions as above appear to be based on reasonable objective considerations of the materials on record. As such so far as the said specific directions of the Hon'ble Single bench are concerned, this court is not motivated to interfere with the same too.

On the discussions as above, both the appeals fail.

Two appeals, being MAT No. 1266 of 2021 and FMA No. 322 of 2023 are dismissed. The judgment of the Hon'ble Single Bench dated 11.11.2021, in writ petition being WPA No. 3437 of 2020, is upheld with the further direction for immediate compliance with all the mandates made therein.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of the usual legal formalities.

(V.M Velumani, J.)

(Rai Chattopadhyay, J.)